

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.221 of 2006 (O & M)
Date of Decision: 10.11.2010.**

Gurdev SinghAppellant

Versus

Bhajan Singh and othersRespondents

Coram:- HON'BLE MR. JUSTICE L. N. MITTAL.

Present: Mr.Sandeep Jain, Advocate for the appellant.

Mr. Vikas Jain, Advocate for respondent Nos.1 to 3.

Respondent No.4 ex parte.

Service of respondent No.5 dispensed with.

L. N. MITTAL, J (ORAL)

Plaintiff-Gurdev Singh having failed in both the Courts below, has filed the instant second appeal.

Plaintiff-appellant alleged that he is in possession of the suit property, which is shamlat property, for more than twenty years. The defendants without any right, title or interest threatened to dispossess the plaintiff therefrom. The plaintiff sought permanent injunction restraining the defendants from forcibly dispossessing the plaintiff from the suit property and from interfering in his possession thereon.

Defendant Nos.1 to 4 contested the suit and denied the plaint averments. The defendants pleaded that plot Nos.12, 13, 29 and 9 min were allotted to Attar Singh migrant from Pakistan being evacuee property in lieu of his claim of property left in Pakistan. Attar

Singh was succeeded by his two sons Milkha Singh and Kartar Singh, who orally partitioned the said plots. Plot Nos. 29 and 9 min fell to the share of Milkha Singh and have been inherited by his sons defendant Nos.1 to 3, which became owners in possession thereof, who is the suit property. Plot Nos.12 and 13 fell to the share of Kartar Singh. Defendant Nos.1 to 3 delivered possession of the suit property to defendant No.4 vide agreement dated 13.03.1997, who is in possession thereof. Various other pleas were also raised. Defendant Nos.2 to 4 were later on proceeded ex parte. Defendant No.5 did not appear in spite of service and was proceeded ex parte in the trial Court.

Learned Civil Judge (Junior Division), Nawashahr vide judgment and decree dated 17.09.2002 dismissed the plaintiff's suit. First appeal preferred by the plaintiff has been dismissed by learned Additional District Judge, Nawanshahr vide judgment and decree dated 09.08.2005. Feeling aggrieved, plaintiff has filed the instant second appeal.

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the appellant vehemently contended that the plaintiff-appellant is in possession of the suit property and, therefore, cannot be dispossessed therefrom except in due course of law. Reliance in support of this contention has been placed on a judgment of this Court in the case of Hukam Singh versus Tara Singh and others, 1992 Civil Court Cases 771 (P & H). The contention cannot be accepted because the plaintiff-appellant has miserably failed to prove his possession over the suit property. Oral statements

of plaintiff and another witness examined by him are not sufficient to prove that the plaintiff-appellant is in possession of the suit property. Third witness examined by the plaintiff is only a Draftsman, who prepared the site plan. On the other hand, statements of plaintiff's witnesses also stand rebutted by statements of the defendants' witnesses. Thus plaintiff's evidence is not sufficient to prove that he is in possession of the suit land. Moreover, mere tethering of cattle or storing of manure as pleaded by the plaintiff would not depict that he is in possession of the suit plot.

Learned counsel for the appellant next contended that the lower appellate Court erroneously observed that plaintiff-appellant is not owner of the suit property and in fact even the plaintiff appellant has pleaded himself to be in possession thereof being Shamlat property. This contention also does not help the appellant because possession of vacant land is presumed to be of the owner. The evidence of plaintiff-appellant is not sufficient to prove that even without being owner of the suit land, he is in possession thereof. At the risk of repetition, it has to be mentioned that mere acts of tethering of cattle etc. do not clothe the plaintiff appellant with possession of the suit land. The plaintiff has even failed to prove the said acts that he is tethering cattle and storing manure etc. in the suit land.

Learned counsel for the appellant next contended that defendants have failed to prove that the suit land was allotted to predecessor of defendant Nos.1 to 3 and has been sold by defendant Nos.1 to 3 to defendant Nos.4 and 5. It was also pointed out that learned lower appellate Court erroneously observed that defendant

Nos.4 and 5 are admittedly true owners of the suit land and the plaintiff appellant cannot seek injunction against them and earlier defendant Nos.1 to 3 were true owners. It was contended that finding of the trial Court on this aspect to the contrary has been reversed by lower appellate Court without recording any reasons. Relying on judgment of Hon'ble Apex Court in **M/s Nopany Investment (P) Ltd. versus Santokh singh (HUF)**, 2008(2) Civil Court Cases 300 (S.C.), learned counsel for the appellant contended that first appellate Court ought to give reasons for reversing the finding of the trial Court. The entire contention is misconceived and devoid of merit. Irrespective of whether defendants or any of them are owners of the suit property or not, the plaintiff cannot succeed unless he proves his own possession over the suit property. However, the plaintiff has failed to prove his possession over the suit property and, therefore, he has been rightly non-suited by the Courts below. There is concurrent finding by both the Courts below holding that plaintiff is not proved to be in possession of the suit property. The said finding is based on proper appreciation of evidence and is supported by cogent reasons. The said finding does not warrant interference in second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is found to be without any merit and is accordingly dismissed.